IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1059 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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STATE OF GUJARAT - Appellant(s)
Versus
R N JOSHI - Opponent(s)

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Appearance :
MR AJ DESAI, APP for Appellant(s) : 1,
MR MJ DAGLI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/08/2007

ORAL JUDGMENT

1. Being aggrieved by and dissatisfied with the judgment and order dated 25.9.1990 passed by learned Metropolitan Magistrate, Ahmedabad, Court No.15, Ahmedabad in Criminal Case No.780 of 1990 whereby learned Magistrate acquitted the accused for the offences punishable under Sections 66(1)(b), 85(1)(3) of Bombay Prohibition Act and Sections 110 and 117 of the Bombay Police Act, the State has preferred this appeal under Section 378 of the Criminal Procedure Code.

2. The brief facts of the prosecution case are such that the

Police Inspector during the raid at Maninagar Railway Station on 8.3.1990 at 17.10 hours caught hold of the accused in a drunk condition in Room No.105 of Ambica Guest House without any pass or permit and behaved in indecent manner and thus committed the offence punishable under Sections 66(1)(b), 85(1)(3) of Bombay Prohibition Act and Sections 110 and 117 of the Bombay Police Act. The complaint to this effect came to be filed with Maninagar Police Station and the accused was arrested and at the end of investigation, the chargesheet was filed against the accused before the learned Magistrate.

3. The charge was framed against the accused for the offences punishable under Sections 66(1)(b), 85(1)(3) of Bombay Prohibition Act and Sections 110 and 117 of the Bombay Police Act and on the accused denying the allegations and claiming to be tried, the evidences of complainant's side were recorded, further statement of the accused was recorded under Section 313 of the Criminal Procedure Code and after hearing learned advocates for the parties, learned Magistrate came to the conclusion, as stated above, against which the present appeal is filed by the State.

4. Heard learned APP Mr.A.J.Desai for the State and learned advocate Mr.Ashish Dagli for the respondent and perused the papers of the trial Court including the judgment which is under challenge.

5. In the facts of the present case, it is necessary to have reference to the provisions of Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 which are mandatory in nature. Rule 4 of the said Rules indicates the manner of collection and forwarding of blood. It can be noticed on plain reading of the aforesaid Rule 4 that the blood is to be collected in the syringe and to be transferred into phial containing anti-coagulant and preservative and it has to be done by the doctor. It is not clear from the material on record as to at what point of time the anti-coagulant and preservative were added in the prepared phial for the purpose of collection of blood of the accused. In this view of the matter, therefore, there is a breach of the provisions of Rule 4. In the present case, the prosecution has examined Dr.Ghanshyam Dabhi at Exh.3. Dr.Dabhi in his examination-in-chief on oath states that he is not aware regarding the procedure for sterilization. Learned Magistrate has recorded the finding that it transpires from the cross examination on oath of Dr.Dabhi that the rules prevailing at the relevant time and technical aspects have not been followed at the time of testing of the blood which creates doubt in the result of testing of blood of the accused. At this stage, reference is required to be made to the decision in the case of Chamanbhai Gangaram Vankar Vs. The State of Gujarat, reported in 1984 Cri.L.J. 1881. The Full Bench of this Court has observed as under.:

“10. The aforesaid discussion yields the following resultant categories of cases -

(i) If the authorised registered medical practitioner who collects the blood sample is in charge of the concerned hospital or dispensary, he can utilise the official seal of the hospital or dispensary for getting it affixed on the phial of collected blood sample. That would be considered to be his official seal;

(ii) If the authorised registered medical practitioner who collects the blood sample in the phial as per rule 4(1), is not in charge of the hospital or dispensary, his official seal for the purpose of its affixation on the phial as rule 4(1) would be his personal seal, if any, and if there is no such seal, he can utilise his monogram for the purpose.

(iii) Any authorised registered medical practitioner who is either a doctor in charge or any other medical practitioner attached to or serving in the hospital or dispensary can in his or her discretion utilise his or her monogram for the purpose of affixing it on the sealed phial even if there is available for the

purpose an official seal of the hospital or his own personal seal, as the case may be."

6. Learned Magistrate, after appreciating the evidence on record, has, therefore, rightly come to the conclusion that there is technical defect in testing of the blood of the accused which creates doubt. Learned Magistrate has come to the conclusion that the prosecution has failed to prove beyond reasonable doubt the offence under Sections 85(1)3) and 66(1)b of the Bombay Prohibition Act. In the present case, sample has not been put kept at the proper place and two seals have been used which are not properly legible. It is required to be noted that, it has come in evidence that the testing of the blood of the accused has not been done by the Chemical Analyzer, but the same has been done by the Assistant to the Chemical Analyzer whose educational qualification is not know.

7. In view of the above, I am in complete agreement with the judgment of the learned trial Judge and, therefore, I do not find any merits in this appeal. Hence, this appeal stands dismissed.

(Sharad D.Dave,J)

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